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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,575	02/22/2002	Robert Stanley Farr	F6146(C)	1985
201	7590	03/03/2004	EXAMINER	
UNILEVER PATENT DEPARTMENT 45 RIVER ROAD EDGEWATER, NJ 07020			MADSEN, ROBERT A	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/081,575		FARR ET AL.	
	Examiner		Art Unit	
	Robert Madsen		1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 15-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/23/02, 01/21/03</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-14 drawn to a pressurized beverage product, classified in class 426, subclass 115.
 - II. Claims 15-21 drawn to a method of consuming a pressurized beverage product, classified in class 426, subclass 394.
2. The inventions are distinct, each from the other because:
3. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the pressurized beverage product as claimed can be used in a materially different process of using, such as dispensing the product into a cup.
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with Edward Squillante on February 5, 2004a provisional election was made with traverse to prosecute the invention of group I, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office

action. Claims 15-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1,2,5,7,8,11-14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fox et al. (US 2977231).

8. Regarding claims 1,2,5,7,8,11-13, see Column 2, lines 15-26, Column 2, line55-33, Column 17, lines 15-21, Examples 5-12,18-20, as evidenced by Figure 1 the valve is suitable to dispense into one's mouth (e.g. size and shape relative to a hand and cup).

9. Regarding claim 14, applicant's disclosure does not define "smooth and silky" per se, but the disclosure states "not smooth and silky (e.g. when carbon dioxide is the sole gas employed)". Since Fox et al. teach the gas comprises nitrogen, nitrous oxide and other propellants, the composition is smooth and silky.

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10. Claims 1-5,7,11,12,14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Goldsmith (US 5143390).

11. Regarding claims 1-5,7,11,12, see Column 5, lines 22-34, Column 6, line 42 to Column 7, line 23.

12. Regarding claim 14, applicant's disclosure does not define "smooth and silky" per se, but the disclosure states "not smooth and silky (e.g. when carbon dioxide is the sole gas employed)". Since Goldsmith teaches the gas comprises pressurized air, the composition is smooth and silky.

13. Claims 1,2,5,7,10,11,12,14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ash (US 3063841).

14. Regarding claims 1,2,7,10,11,12, see Column 1, line 60 to Column 2, line 2; Column 2, lines 22-70, Column 3, lines 17-21.

15. Regarding claim 14, applicant's disclosure does not define "smooth and silky" per se, but the disclosure states "not smooth and silky (e.g. when carbon dioxide is the sole gas employed)". Since Ash teaches the gas comprises both nitrogen and carbon dioxide, the composition is smooth and silky.

16. Claims 1,2,5,7,11,12,14, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kahan (US 3119695).

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17. Regarding claims 1,2,5,7,11,12, see Column 3, line 20 to Column 4, line 3, Column 5, lines 25-30, Column 7, lines 16-47, Column 8, lines 24-45 and Figures 1-3.

18. Regarding claim 14, applicant's disclosure does not define "smooth and silky" per se, but the disclosure states "not smooth and silky (e.g. when carbon dioxide is the sole gas employed)". Since Kahan teaches the gas comprises nitrogen, the composition is smooth and silky.

19. Claims 1,5,7,11 and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jo et al. (JP 01289450A).

20. See JPO and Derwent Abstracts. Note that since the valve is suitable to replace a spoon (See Derwent Abstract) it must suitable to dispense into a mouth of a consumer.

21. Claims 1,5,7,11,14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Steinberg et al. (US 3480185).

22. Regarding claims 1,5,7,11, see Column 1, line 48 to column 2, line 2, Column 2, lines 41-45.

23. Regarding claim 14, applicant's disclosure does not define "smooth and silky" per se, but the disclosure states "not smooth and silky (e.g. when carbon dioxide is the sole gas employed)". Since Steinberg et al. teach the gas comprises either fluorine-based propellants or nitrous oxide the composition is smooth and silky.

Claim Rejections - 35 USC § 103

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

25. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldsmith (US5143390) as applied to claims 1-5,7,11,12 above.

26. Goldsmith is silent in teaching the beverage (e.g. water or juice) has less than about 0.5 ppm chlorine. However, it is notoriously well known in the art to remove chlorine from water to improve taste. Therefore, it would have been obvious to remove the chlorine to less than 0.5 ppm prior to filling the container of Goldsmith since this is a conventional method for improving the flavor of water.

27. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fox et al. (US 2977231) as applied to claims 1,2,5,7,8,11-13 above.

28. Although Fox et al. are silent in teaching removing the pulp from the citrus juice, Fox et al. teach the containers have orifices anywhere from 0.05 to 0.09 inches in diameter (column 3, lines 52-61). Consequently, it would have been obvious to remove pulp from a citrus fruit juice since the discharge orifice of the container is 0.05-0.09

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inches in diameter and leaving the pulp in the juice would result in an obstruction of the discharge orifice.

Double Patenting

29. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

30. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

31. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

32. Claims 1-9,11-14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6,9-12,15 of copending Application No. 10/081,483.

33. Regarding claims 1-5,7,8,11-14, Although the conflicting claims are not identical, they are not patentably distinct from each other because '483 claims a pressurized coffee, tea or water based (which would include citrus) beverages held in a container with a 10-80% headspace (i.e. includes 30-96% beverage) and includes oxygen, nitrogen, noble gases or mixtures thereof, which do not solely contain carbon dioxide

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(i.e. are smooth and silky) , held at least 2.5 bar wherein the valve for the container is mouth actuated.

34. Regarding claim 6, '483 claims water based beverages, but does not claim less than 0.5 ppm chlorine. However, it is notoriously well known in the art to remove chlorine from water to improve taste. Therefore, it would have been obvious to remove the chlorine to less than 0.5 ppm since this is a conventional method for improving the flavor of water.

35. Regarding claim 9, '483 claims water-based beverages, which would include citrus beverages, and '483 also claims a dip tube. '483 does not claim removing pulp from citrus. However, it would have been obvious to filter out any solid matter, such as pulp, solids may clog a dip tube.

36. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

37. Claim 10 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-6,9-12,15 of copending Application No. 10/081,483 in view of Sarna et al. (US 3947566).

38. Although '483 claims an effervescent gas containing beverage, '483 does not claim at least 80% of the gas bubbles are less than about 0.5 mm in diameter.

39. Sarna et al. teach the correlation between bubble size for beverages and sounds /appearances/ mouthfeel (Column 14, line 25 to column 15, line 40). To select any particular bubble size would have been an obvious matter of choice, depending on the

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desired sound, appearance, and mouthfeel of the beverage. This is a provisional obviousness-type double patenting rejection.


Conclusion

40. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

41. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

42. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761



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